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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,884	10/20/2003	Thomas Stark	A 91841	2059

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EXAMINER

PECHHOLD, ALEXANDRA K

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 04/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/687,884	STARK ET AL.	
	Examiner	Art Unit	
	Alexandra K. Pechhold	3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-7, 12-14 and 16-20 is/are rejected.
- 7) ☒ Claim(s) 8-11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/18/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 21 is objected to because of the following informalities: in line 15 "at at" appears to be a typographical error. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 2-7, 12-14, and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maxwell (US 5,836,142) in view of Pearson et al (US 2,770,466).**

Regarding claim 5, Maxwell discloses a portable handheld work apparatus arrangement comprising:

- a work apparatus including a drive motor (seen as engine 50) and a work tool (seen as the cord 53 of lawn trimmer 12) driven by the motor;
- at least one transport wheel (seen as either of wheels 13, 14);
- first and second struts (seen as frames 23 and 18, respectively);
- the first strut (seen as frame 23) having a first end (seen as end farthest from the wheels) facing away from the wheel and the first strut being

rotatably mounted on the work apparatus at the first end (since the end of frame 23 is rotatably mounted to shaft 21), and

- the second strut (seen as frame 18) having a first end (seen as end farthest from the wheels) facing away from the transport wheel, and
- the second strut being fixable at the first end thereof on the work apparatus (see Fig. 1) at first and second attachment points thereon (since the frame 18 can be attached at a variety of locations at the lower end of shaft 21), so as to change the position of the wheel relative to the apparatus.

Maxwell fails to disclose attachment points being configured as detent recesses. Pearson teaches utilizing detent recesses (seen as notches 42) to affix the upper end of arm (28) to different attachment points on the apparatus (see Figs. 1 and 2 and Col 3, lines 7-63). Being able to secure the upper end of the arm (28) at different notches (42) allows the legs to be retained in an extended position, fully retracted position, or intermediate position (Col 3, lines 13-15), thus locking the wheel carrying legs to retain the wheels at any one of a plurality of definite spacings provided for (Col 1, lines 33-37). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Maxwell to utilize detent recesses as attachment points as taught by Pearson, since Pearson states in column 1, lines 33-37 that this allows the wheel carrying legs to retain the wheels at any one of a plurality of definite spacings provided for, so that the wheels can be adjusted for different spacing to help facilitate a transport mode or a storage mode (see column 1, lines 16-32).

Regarding claim 2, the first strut (seen as frame 23) defines an axis of rotation at the first end thereof (see Fig. 1 at the attachment of frame 23 to shaft 21 via bracket), the first and second attachment points are at first and second distances (seen as any two locations on the bottom end of the shaft 21 where the frame 18 can be attached to) from the axis of rotation, and the first and second distances being different from each other.

Regarding claim 3, the work apparatus has a frame (seen as shaft 21) and the wheel is disposed at the frame when the second strut (seen as frame 18) is fixed at the first attachment point (since the language "disposed at" in its broadest reasonable interpretation can encompass the a view such as in Fig. 1 wherein either wheel 13, 14 is "disposed at" the shaft 21 since they are close to each other).

Regarding claim 4, the wheel (13 or 14) is at a distance from the shaft (21) when the frame (18) is fixed at the second attachment point.

Regarding claim 6, Maxwell fails to disclose a rail having a detent recess formed therein closed in a direction toward the second strut. Pearson teaches utilizing detent recesses (seen as notches 42) to affix the upper end of arm (28) to different attachment points on the apparatus (see Figs. 1 and 2 and Col 3, lines 7-63). Being able to secure the upper end of the arm (28) at different notches (42) allows the legs to be retained in an extended position, fully retracted position, or intermediate position (Col 3, lines 13-15), thus locking the wheel carrying legs to retain the wheels at any one of a plurality of definite spacings provided for (Col 1, lines 33-37). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Maxwell to

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utilize detent recesses as attachment points as taught by Pearson, and have the detent recesses formed therein closed in a direction toward the second strut, since Pearson states in column 1, lines 33-37 that this allows the wheel carrying legs to retain the wheels at any one of a plurality of definite spacings provided for, so that the wheels can be adjusted for different spacing to help facilitate a transport mode or a storage mode (see column 1, lines 16-32), and furthermore, modifying the open detent recesses to be closed does not alter the purpose and function of the detents providing adjustability to the device.

Regarding claim 7, the second attachment point as taught by Pearson is configured as a detent recess open toward the second strut (see Fig. 1).

Regarding claim 12, Maxwell discloses a plurality of second attachment points since they can be at varying locations along the shaft (21) at different distances from the axis of rotation of the first end of the first strut.

Regarding claim 13, Maxwell discloses first and second transport wheels (13, 14) and an axle each (see Fig. 2), and an additional first strut (seen as either 28 or 29), and the axle is held by said two first struts and said second strut (see Fig. 2).

Regarding claim 14, Maxwell discloses a type of motorized cultivator, since the invention is a motorized lawn trimmer.

Regarding claims 16, 18, and 19, Maxwell discloses a transport device for a portable handheld work apparatus, the transport device comprising:

- at least one transport wheel (seen as either of wheels 13, 14);

- first and second struts connected to said transport wheel (seen as frames 23 and 18, respectively);
- said second strut (seen as frame 18) having a first end (seen as end farthest from the wheels) facing away from the transport wheel; and
- a rail (seen as shaft 21) arranged on said first end of said second strut and said rail having at least two attachment points (seen as any two points on shaft 21 where the end of frame 23 can be attached to).

Maxwell fails to disclose attachment points being configured as detent recesses, or a rail having a detent recess formed therein closed in a direction toward the second strut, or a rail having a plurality of detent recesses formed therein open toward the second strut. Pearson teaches utilizing detent recesses (seen as notches 42) to affix the upper end of arm (28) to different attachment points on the apparatus (see Figs. 1 and 2 and Col 3, lines 7-63). Being able to secure the upper end of the arm (28) at different notches (42) allows the legs to be retained in an extended position, fully retracted position, or intermediate position (Col 3, lines 13-15), thus locking the wheel carrying legs to retain the wheels at any one of a plurality of definite spacings provided for (Col 1, lines 33-37). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Maxwell to utilize detent recesses as attachment points as taught by Pearson, or have the rail include detent recesses formed therein open toward the second strut as taught by Pearson or have the detent recesses formed therein closed in a direction toward the second strut, since Pearson states in column 1, lines 33-37 that this allows the wheel carrying legs to retain the wheels at any one of a

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plurality of definite spacings provided for, so that the wheels can be adjusted for different spacing to help facilitate a transport mode or a storage mode (see column 1, lines 16-32), and furthermore, modifying the open detent recesses to be closed does not alter the purpose and function of the detents providing adjustability to the device.

Regarding claim 17, the first strut of Maxwell (seen as frame 23) has a first end facing away from the wheel (see Fig. 1), and wherein the transport device further comprises a bolt arranged at the first end of the first strut (seen as the bolts in Fig. 4 which appears to be the same configuration at the other bracket).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Maxwell (US 5,836,142).** Maxwell discloses a portable handheld work apparatus arrangement comprising:

- a work apparatus including a drive motor (seen as engine 50) and a work tool (seen as the cord 53 of lawn trimmer 12) driven by the motor;
- at least one transport wheel (seen as either of wheels 13, 14);
- first and second struts (seen as frames 23 and 18, respectively);

- the first strut (seen as frame 23) having a first end (seen as end farthest from the wheels) facing away from the wheel and the first strut being pivotally mounted on the frame at the first end (since the end of frame 23 is pivotally mounted to shaft 21), and
- the second strut (seen as frame 18) having a first end (seen as end farthest from the wheels) facing away from the transport wheel, and
- the second strut being capable of being fixed at the first end thereof on the shaft (21) (see Fig. 1) at first and second attachment points (since the frame 18 can be attached at a variety of locations at the lower end of shaft 21); and
- the work apparatus having a frame (seen as shaft 21) and the transport wheel (13 or 14) being disposed at the frame when the second strut (18) is fixed at the first attachment point, so as to cause the wheel not to come into engagement with the ground when the tool is in its work position (which can be seen in Fig. 1 when clamps 40, 41 are loosened and frame 23 is further up shaft 21).

Allowable Subject Matter

6. Claims 8-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments have been considered but are moot in view of the new grounds of rejection. The Examiner is also withdrawing the previously indicated allowability of claims 5-11, 16, 18, and 19, in light of an updated search and prior art that is being used to reject the limitation of the detent recesses.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (571) 272-6994. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (571) 272-6998. The fax phone number for this Group is (571) 273-8300.



**Alexandra Pechhold
Patent Examiner
Group 3600**

AKP
4/19/06